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PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional)
	10006371-1

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _January 19, 2006_	Application Number 09/927,163	Filed 08/09/2001
Signature _(signed)_	First Named Inventor John WILKES	
Typed or printed name _Claire Doyle_	Art Unit 2162	Examiner Anh LY

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
   Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

☐ attorney or agent of record. Registration number _____

☒ attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34   40,872

(signature)
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January 19, 2006
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

<u>REASONS WHY REVIEW IS REQUESTED</u>

All of the pending claims 1-25 are currently rejected. To summarize prosecution of the subject application so far, three non-final office actions have been issued, each relying on a different combination of references to reject the applicant's claims. In response to each of these office actions, the applicant pointed out how the claims patentably distinguish over the cited references. In the fourth office action, the rejections were made final. Believing the final rejection to be improper, the undersigned requested an examiner interview. During the interview, the examiner appeared to agree with the undersigned's explanation of how the claims patentably distinguish over the cited references, though the examiner also requested that certain claims be amended to improve their clarity. Unexpectedly, the Advisory Action maintained all of the rejections and indicated that the amendments requested by the examiner would not be entered.

The applicant believes that there is clear error in the current rejections, as explained below. Moreover, the amendments requested by the examiner during the interview are unnecessary to overcome the rejections.

<u>Rejection of independent claim 1:</u>

Independent claim 1 is rejected as being unpatentable over U.S. Patent No. 6,772,155 issued to Stegelmann (hereinafter "Stegelmann") in view of U.S. Patent No. 6,816,891 issued to Vahalia, et al. (hereinafter "Vahalia").

Claim 1 recites (the unentered amendments are omitted):

1.   A method of retrieving data from a data storage medium comprising:
        loading a program from the data storage medium into a computer system, the program including at least a first routine for responding to a first request type for access to the data storage medium and a second routine for responding to a second request type for access to the data storage medium;
        receiving a request for access to data stored on the data storage medium;
        determining whether the request is of the first type or the second type;
        calling the first routine for accessing the data when the request is of the first type and calling the second routine for accessing the data when the request is of the second type; and
        presenting the requested data.

Therefore, claim 1 recites "retrieving data from a data storage medium comprising ... loading a program from the data storage medium ... receiving a request for access to data stored on the data storage medium... accessing the data...". In other words, claim 1 requires that the program is <u>loaded from</u> the data storage medium and that the accessed data is <u>stored on</u> the data storage medium. This means that the program is loaded from <u>the same data storage medium that stores the data to be accessed</u>.

The applicant previously explained that the Stegelmann and Vahalia references, considered singly or in combination, do not suggest or disclose such a feature. See e.g., applicant's response filed June 23, 2005, at page 8, line 22 to page 10, line 2; see also, applicants' Interview Agenda submitted Nov. 15, 2005 at page 2. In the final rejection, the examiner stated that "the features upon which the applicant relies (i.e. loaded from <u>the same storage medium that stores the data to be accessed</u>) are not recited in the rejected claim(s)." It is apparent that this statement forms the basis for the continued rejection of claim 1 because the cited references do not suggest or disclose such a feature. However, the applicants respectfully submit that the statement is clearly in error. This is because, as explained above, the existing language of claim 1 does in fact contain this limitation. For at least this reason claim 1 is allowable.

In addition, the "first routine" and the "second routine" of claim 1 are alternatives such that, for a particular request, one or the other of the routines is called for accessing the data based on the type of the request. This is clear because claim 1 recites a step of "determining whether the request is of the first type or the second type" and calling one or the other of the routines based on the type of the request. The applicant previously explained that the Stegelmann and Vahalia references, considered singly or in combination, do not suggest or disclose such a feature. See e.g., applicant's response filed June 23, 2005, at page 10, lines 3-17; see also, applicants' Interview Agenda submitted Nov. 15, 2005 at page 2. The applicant respectfully submits that this is another reason why claim 1 is allowable.

<u>Rejection of Independent Claims 15 and 22:</u>

Like claim 1, independent claims 15 and 22 are rejected as being unpatentable over Stegelmann in view of Vahalia.

Claim 15 recites (the unentered amendments are omitted):

15.　　An article of manufacture comprising a computer usable medium having data stored thereon and having computer readable program code stored thereon, the computer readable program code including a first routine for accessing the data in response to a request for access to the data as one or more raw data blocks and a second routine for accessing the data in response to a request for access to the data as a file structure.

Claim 22 recites (the unentered amendments are omitted):

22.　　An article of manufacture comprising a computer usable medium having data stored thereon and having computer readable program code stored thereon, the computer readable program code including a first routine for accessing the data in response to a request from a first target system type and a second routine for accessing the data in response to a request from a second target system type.

Therefore, claims 15 and 22 recite "a computer usable medium having data stored thereon and having computer readable program code stored thereon." The program code includes the routines for accessing the data. Therefore, the program code is stored on the <u>same data storage medium that stores the data to be accessed</u>. The applicant previously explained that the Stegelmann and Vahalia references, considered singly or in combination, do not suggest or disclose such a feature. See e.g., applicant's response filed June 23, 2005, at page 8, line 22 to page 10, line 2; see also, applicants' Interview Agenda submitted Nov. 15, 2005 at page 2. However, the examiner has stated in the final rejection that this feature is not in the claims. As explained above, this is clearly in error. The applicant respectfully submits that this feature is in claims 15 and 22 and serves to distinguish them from the cited references. Accordingly, claims 15 and 22 are allowable.

In addition, the "first routine" and the "second routine" of claims 15 and 22 are alternatives such that, for a particular request, one or the other of the routines is called for accessing the data. As explained above, the Stegelmann and Vahalia references, considered singly or in combination, do not suggest or disclose such a feature. This is another reason why claims 15 and 22 are allowable.

<u>Rejection of Independent Claim 25</u>:

Independent claim 25 is also rejected as being unpatentable over Stegelmann in view of Vahalia.

Claim 25 recites (the unentered amendments are omitted):

25.   An article of manufacture comprising a computer usable medium having data stored thereon and having computer readable program code stored on secondary storage associated with the computer usable medium, the computer readable program code including a first routine for accessing the data in response to a request of a first request type and a second routine for accessing the data in response to a second request type, wherein the secondary storage is built into a cartridge for the data storage media.

Therefore, claim 25 recites "a computer usable medium having data stored thereon and having computer readable program code stored on secondary storage associated with the computer usable medium ... wherein the secondary storage is built into a cartridge for the data storage media." In other words, claim 25 recites a cartridge for a data storage medium wherein data stored is stored on the medium and also recites secondary storage built into the cartridge wherein program code for accessing the data is stored on the secondary storage. The applicant previously explained that the Stegelmann and Vahalia references, considered singly or in combination, do not suggest or disclose such a feature. See e.g., applicant's response filed June 23, 2005, at page 12, lines 10-20 (where the applicant explained that the mere mention of a tape cartridge by Vahalia does not disclose secondary storage built into the cartridge for the primary storage media); see also, applicants' Interview Agenda submitted Nov. 15, 2005 at page 3. Accordingly, claim 1 is allowable. The examiner appears not to have taken notice of this feature of claim 25 or of the applicant's arguments regarding it. Instead, the rejection of claim 25 is merely repeated in the final office action without further comment. This is contrary to the requirement of the MPEP which states that an examiner must provide clear explanations of all actions taken during prosecution of an application. MPEP at Section 707.07(f)(Oct. 2005).

In addition, the "first routine" and the "second routine" of 25 are alternatives such that, for a particular request, one or the other of the routines is called for accessing the data. As explained above, the Stegelmann and Vahalia references,
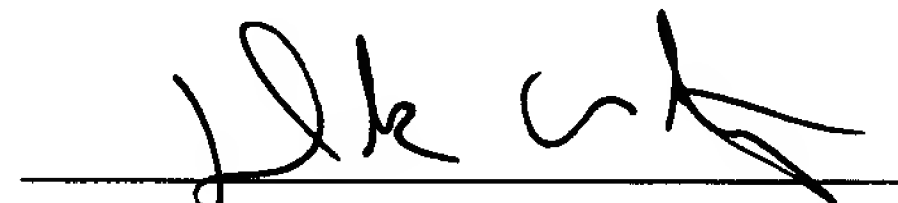
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considered singly or in combination, do not suggest or disclose such a feature. This is another reason why claim 25 is allowable.

<u>Conclusion:</u>

The applicant respectfully submits that the rejection of claims 1, 15, 22 and 25 is clear error because each of these claims contains features clearly not disclosed by the prior art. Dependent claims 2-14, 16-21 and 23-24 are allowable at least because they depend from an allowable base claim.

Respectfully Submitted,

Dated: Jan. 19, 2006

Derek J. Westberg (Reg. No. 40,872)